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MINORITY VIEWS

CHARTER REVIEW COMMISSION RECOMMENDATION B

A NEW SECTION 511 RE COLLECTIVE BARGAINING FOR COUNTY EMPLOYEES

The undersigned members of the Charter Review Commission wish to make known their views with respect to the Commission's Recommendation B endorsing a Charter amendment relating to collective bargaining for county employees not covered by Section 510 of the Charter. While we support the action of the Commission and applaud its unanimous, bipartisan decision to advance this Charter amendment, we are concerned that the language adopted in the amendment may not accomplish its implied objective.

In 1980, Montgomery County voters approved by an overwhelming majority a Charter amendment, -- Section 510 -- which declared that "the Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County police officers. Any law so enacted shall prohibit strikes or work stoppages by police officers."

As a result of this action, the subsequent enacting legislation was passed by the County Council, collective bargaining was entered into by County Government and the police and a contract was agreed subsequently upon. The undersigned believe that this process, which eventuated the achievement of collective bargaining rights, occurred solely because the voters had approved this charter amendment which had directed the County Council to pass the appropriate legislation.

However, the language now proposed by the Charter Review Commission in a new Section 511 may not effect this outcome. It provides only that the Montgomery Council "may provide by law for collective bargaining . . ." An effort by members of the Commission to amend Section 511 conform to the "shall provide" language of the existing Section 510 was defeated by a 6-5 roll call vote. The undersigned members of the Commission still advocate the inclusion of the "shall provide" language for several reasons.

First, Charter amendments adopted by the Charter Review Commission in theory and in practice have and should continue to advance specific public policy objective(s) with respect to change(s) in the Charter. Such objective(s), once approved by the County Council for submission to the voters, ask the electorate to pass judgement on the Commission's recommendation(s) in those areas where the Commission and the Council deem that revision of the Charter is either appropriate or necessary.

However, the proposed Section 511 amendment is deficient in this regard specifically with respect to the clarity of its public policy objective. The "may provide" language of the currently proposed is ambiguous and fails to offer the voters a clear choice on the public

policy question of whether or not their county employees should have collective bargaining rights. We fear the electorate is very likely to believe that it is rendering a decision on the merits of this issue, as it did in 1980, only to find out that after it has cast its ballots that, in fact, the language of the Charter amendment does not guarantee county workers the statutory right to collective bargaining. That decision is left to the legislative discretion of the County Council by Section 511 as drafted.

While we believe it is appropriate to leave the formulation of the particulars of any subsequent collective bargaining statute to the County Council, it is a disservice to the electorate to have them cast their votes on a public policy matter of this magnitude and then, if it is approved, leave open the distinct possibility that its implementation would be denied by the County Council. The decision of the electorate then would have been circumvented and the Charter amendment process will have been, in this case, effectively reduced to an advisory referendum. This we feel is contrary to the purpose of the Charter Review process. We firmly believe, therefore, that recommendations of the Charter Review Commission ought to be unmistakably clear with respect to the choice being offered to the voters and that such a choice assures implementation of a specific policy. In this respect, the recommendation of the Commission as now drafted is deficient.

Secondly, we feel that county employees are being treated somewhat disingenuously by the Charter Review Commission. Given both the exhaustive review of this policy question by this and previous Charter Review Commissions as well as the voter's overwhelming decision in 1980 on this issue, we feel the Commission has an obligation to our county employees to offer voters a decision on a Charter amendment which at a minimum embraces the economic rights already afforded another class of county workers namely, the police. Instead, we have offered them the illusion of collective bargaining and not the assurance that they will ultimately attain by law the right to collective bargaining. To hold out such false hopes is both a disservice to county employees and the voters who will decide this question.

Thirdly, it should be noted that since the voters approved a collective bargaining with binding arbitration for the police in 1980 as a charter amendment, that the Commission is now offering the voters a second, more broad-based decision on this matter -- applicable to the vast majority of other county employees -- which is a weaker statement of public support for the right of collective bargaining than that already approved by the voters. The undersigned believed the Charter Review Commission should provide at least the same policy choice in 1984 as that approved in 1980.

Finally, objection has been heard to the inclusion of the "shall provide" language on the basis that it provides a legislative directive to the County Council which exceeds the

responsibility of the Charter Review Commission. The undersigned agree with the point of view that the Commission should not undertake legislative policymaking. However, the majority, which rejected the "shall provide" language, saw fit to do exactly that by incorporating language from Section 510 within the new Section 511 that prohibits "strikes or work stoppages." The undersigned believe that the inclusion of the "no strike" language does in fact interfere with the legislative discretion of the Council in providing for collective bargaining rights by specifying the parameters of such a statute. We clearly understand, differentiate and respect the need to maintain the legislative discretion of the Montgomery County Council with respect to the Commission's public policy recommendation(s). Yet the majority on this question has seen fit to breach this principle with respect to their amendment to prohibit strikes. We seek here only to clarify for the record the inconsistency of the views offered by the majority in their opposition to the "shall provide" language.

In conclusion, the undersigned members of the Commission continue to support the inclusion of the "shall provide" language for the reasons herein stated. We request, therefore, that these views represent the minority viewpoint on Recommendation B.